

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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LI FAN, individually and on
behalf of all others similarly
situated,

Plaintiff,

v.

HOME DEPOT U.S.A., INC., a
Delaware Corporation; and DOES
1-50, inclusive,

Defendants.

No. 1:21-cv-01355 WBS KJN

ORDER

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This case was set for hearing on September 6, 2022 on defendant's motion to dismiss (Docket No. 6). The court was prepared to hear and decide the motion on the merits, but at oral argument, counsel for both sides discussed cases which they had not previously brought to the court's attention, and which may have substantial bearing on this motion.¹

¹ One case, Naranjo v. Spectrum Security Services, Inc., 13 Cal. 5th 93 (2022), was decided in May 2022, after briefing

1 The court notes that this motion was fully briefed as
2 of November 3, 2021 but was only reassigned to the undersigned on
3 July 28, 2022, after the court found this case was related to an
4 earlier-filed related case, Reynosa v. Home Depot, No. 2:21-cv-
5 01096 WBS KJN. The undersigned thereafter promptly set the for
6 hearing. (See Docket Nos. 11, 23, 25.) The delay in
7 reassignment resulted from counsel's failure to fully comply with
8 Local Rule 123. The notice of related cases was initially filed
9 in this case only, contrary to Local Rule 123's requirement that
10 "[c]ounsel who has reason to believe that an action on file or
11 about to be filed may be related to another action on file . . .
12 shall promptly file in each action and serve on all parties in
13 each action a Notice of Related Cases."² Thus, the undersigned
14 had no knowledge of this case until late July 2022, when the
15 parties in this case finally filed their notice of related case
16 in Reynosa, after being ordered to do so by Judge Thurston in
17 this case. (See Docket No. 47 in Case No. 2:21-cv-01096 WBS KJN;
18 Docket No. 21 in Case No. 1:21-cv-01355 WBS KJN.)

19 Laying aside the parties' failure to fully comply with
20 Local Rule 123, the parties still could have avoided taking the
21 court by surprise by notifying the court of the additional

22 was complete but more than three months before the hearing in
23 this case. The other case, cited by plaintiff at oral argument,
24 Moore v. Mars Petcare US, Inc., 966 F.3d 1007 (2020), was decided
25 more than two years before oral argument and more than a year
before briefing in this case was complete.

26 ² The court notes that defendant first attached a notice
27 of related case to the notice of removal, and then two months
28 later filed a separate notice of related case, both times filing
the notice of related case in this case only. (See Docket Nos.
1-6, 12.)

1 authorities they sought to rely on by, for example, seeking leave
2 to file supplemental briefs discussing these additional
3 authorities. They did not do so, and provide no justification
4 for this failure.

5 The court prefers not to do the research for the
6 parties in order to decide the instant motion. Instead, as
7 discussed by the court at the hearing, the court will deny the
8 pending motion to dismiss without prejudice to refiling, without
9 reaching the merits of defendant's motion.

10 IT IS THEREFORE ORDERED that defendant's motion to
11 dismiss (Docket No. 6) be, and the same hereby is, DENIED without
12 prejudice to refiling. Defendant shall file a new motion to
13 dismiss, discussing all cases defendant intends to rely on,
14 within fourteen days of the date of this order. Plaintiff shall
15 file her opposition to the new motion to dismiss within fourteen
16 days, discussing all cases plaintiff intends to rely upon. Any
17 reply shall be filed within ten days of plaintiff's opposition.
18 The new motion to dismiss will be heard by Zoom at 1:30 p.m.
19 October 31, 2022.

20 Dated: September 8, 2022



21 WILLIAM B. SHUBB
22 UNITED STATES DISTRICT JUDGE
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